Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-89

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

On Appeal from the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Virginia W. Lucom prays that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit entered in this case on April 15, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Appendix D, infra, page 26a) is a per curiam opinion on which has been stamped "Do Not Publish". It affirms the decision of the United States District Court, Southern District of

Florida, which was entered July 23, 1975 (Appendix C, infra, page 20a).

JURISDICTION

The judgment of the Court of Appeals (Appendix D, page 26a) was entered April 15, 1977 and this Court's jurisdiction is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

The following questions all involve the standards which must be used in ruling on motions to dismiss under Federal Rules of Civil Procedure 12:

1. May the complaint's substantial separate SECOND Count unrelated to taxation and alleging "a conspiracy to effect a partial taking of plaintiff's property without compensation by arbitrarily classifying it as a park, in violation of 42 USC 1985" be lawfully summarily dismissed because of 28 USC 1341?

2. May the THIRD Count, which realleges aforesaid SECOND Count, be lawfully summarily dismissed under 28 USC 1341, merely because it further alleges the conspiracy expanded to include a defrauding of plaintiff by a grossly discriminatory assessment of twenty times abutting comparables in violation of 42 USC 1985?

3. As to the FOURTH Count, where Florida statute reposes sole discretion, which is not subject to judicial review, in assessor to correct errors in prior assessment which he did over 1,600 times as to other properties on the 1974 tax rolls, but as to admitted gross error of $7,685,400 on plaintiff's property assessment assessor discriminatorily refuses for political reasons for correct same, can district deny jurisdiction of a valid complaint 42 USC 1986 because of 28 USC 1341 where there is no state court remedy?

4. As to FIRST Count, and every other count, can the district court summarily dismiss count denying jurisdiction because of 28 USC 1341, where complaint alleges plaintiff received no notice of proposed increased assessment and therefore did not seek administrative review of same which is a jurisdictional prerequisite to state judicial review?

5. As to FIFTH Count, and every other count, can the district court deny jurisdiction because of 28 USC 1341, where the present Florida administrative and judicial review is restricted to just valuation of assessment of complainant's property and unconcerned with inequality of assessment of comparable parcels?

6. As to ALL Counts, do Florida statutes and practice provide a "plain, speedy and efficient remedy" in its courts, under the circumstances of this case?

7. As to EACH Count separately, is it one to "enjoin, suspend or restrain the assessment, levy, or collection" of a state tax?

8. As to ANY Count, can the district court grant a motion to dismiss under 28 USC 1341, where complaint alleges precise facts and circumstances which bring the action within the exceptions to applicability of 28 USC 1341?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

STATUTES

28 USC 1341.

"Taxes by States. The District Court shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such state."

42 USC 1985 (3).

> "If two or more persons in any State or Territory conspire. . . . for the purpose of depriving either directly or indirectly any person (or class of persons) of the equal protection of the laws or of equal privileges and immunities under the laws; "in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

F.R.C.P. 8(e)(2).

> "When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements."

STATEMENT OF THE CASE

This is an appeal from the per curiam order of the Fifth Circuit's order affirming the District Court's order granting Appellees' motions for dismissal of Appellant's Complaint on the ground that it lacked jurisdiction because of 28 USC 1341 in that it is "a suit to 'enjoin, suspend or restrain the assessment, levy, or collection' of a state tax and that a 'plain, speedy and efficient remedy' may be had in the state courts."

The Appellant, a citizen of the State of Maryland, bought in 1952 approximately 545 acres of raw unimproved land in Palm Beach County, Florida. She has owned it continuously since then and it has been zoned at all times here pertinent as "agriculture" and it has been kept in its natural unimproved, uncultivated status.

In 1973 various Appellees, not including the Assessor, who held various public offices, caused to be promulgated, without actual notice to the Appellant, a Land Use Map on which the bulk of Appellant's aforesaid tract was classed as public "Institutional" use, without any compensation to Appellant, and embarked upon a conspiracy to cause to be denied to Appellant's tract any different use or zoning change which would interfere with its dedication to public use as a park. Said appellees engaged in a conspiracy to in effect preclude any normal use of Appellant's tract other than as an incipient park, without compensation to Appellant. The scope and pertinent overt acts of the conspirators are set forth in paragraphs 35, 36, 37, and 38 of the Complaint Appendix A pages 12a and 13a and supported by various Exhibits annexed thereto. The acts include many, under color of law intended to (a) (preclude) normal use of the Ap-

pellant's tract (b) frustrate any rezoning (c) depress its value and otherwise harass any effort to deviate from "public" use. The foregoing activities constitute the Second Count of the Complaint, which do not involve the Assessor or taxation, but on the contrary, relate to dedication to the use of a public park without compensation, blocking of rezoning and harassment of activities which resulted in annexation of Appellant's tract out of the unincorporated area of the county into the Town of Greenacres City.

The Third Count of the Complaint alleges that the Assessor and an assistant joined the conspiracy in progress (Second Count) and engaged in various overt acts set out as First Count which include:

"5. Defendant Assessor DAVID REID under color of law, intentionally, invidiously, grossly and arbitrarily discriminated against plaintiff by illegally spot re-assessing unequally her 545 acres of unimproved land, zoned 'agriculture', from approximately $490,000.00 (or about $890.00 per acre) or a property tax of about $13,000.00 for 1973, to a 1974 assessed value of $10,993,440.00 at a 1974 property tax of $263,353.73, an increase in assessed value of about twenty-two times, or about $10,500,000.00 more assessed value without any change in zoning or present use, thus using a discrimination so gross as to amount in law to be a fraud whereby plaintiff will be defrauded out of over $240,000.00 for 1974 property tax in violation of her federal constitutional right of equal protection under law and in violation of 42 USC 1985 by his conspiracy with others in its accomplishment as hereinafter alleged. Scores of parcels of abutting adjoining or nearby land, with identical zone and use, are uniformly assessed in a range for 1974 assessment of $800.00 to $1,200.00 per acre (per Ex. A, attached map, incorporated herein by

this reference) or about one twentieth of that of plaintiff's land.

"6. (a) During the latter part of 1973 and during 1974 defendant CHARLES STAHMAN conspired with defendant DAVID L. REID and others presently unknown to plaintiff to specially re-assess in a grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed land on the west side of the Town of Greenacres City, in furtherance of which plan, and under color of law, defendant did raise the assessment of the Lucom tract by over twenty times, without properly notifying the plaintiff.

"7. The Lucom tract 1974 assessed value of about $20,000.000 per acre (see paragraph 5, supra) is about twenty times that of abutting, contiguous, adjoining and all nearby acres similarly zoned agriculture as is established from Map of Comparables (Ex. A, annexed hereto and incorporated herein by this reference) which shows the assessment code, location, and 1974 assessed valued (sic) per acre of dozens of comparable and similarly zoned 'agricultural' parcels surrounding the Lucom tract. The gross disparity of twenty to one is the result of an intentional plan and system to invidiously discriminate against the plaintiff and the aforesaid conspiracy to thus deprive her of equal protection under law by virtue of manner in which said defendant REID administers same.

"8. The Lucom tract 1974 assessed value of about $20,000.00 per acre (see paragraph 5, supra) is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling unites (sic) per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned 'Agriculture'—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit B, annexed hereto and incorporated herein by this reference) which shows

the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below the Lucom tract, yet having zoning for a much higher use. Plaintiff can not find any parcels so highly assessed as those which were the object of the conspiracy described in paragraph 6(a), supra.

"9. Plaintiff has been informed that there is no other unimproved land zoned 'agriculture' in the entire Palm Beach County which has been assessed at a value approaching $20,000.00 per acre for 1974, and believing same, so avers.

"10. As a further and telling example of the intentional, gross and invidious discrimination by defendant REID, REID appraised at $6,500.00 per acre for 1974 a parcel of acres in Century Village zoned RH (for eighteen units per acre having identifying assessment code 00-42-43-23-13-000-0021 and owned by Century Village, Inc. whose president is H. Irwin Levy, Esquire, who also advertises his firm Levy, Plisco, Perry, Reiter, and Shapiro as attorney for said Appraiser DAVID L. REID, and so acts (see Ex C, annexed, incorporated herein by this reference) and said appraiser's attorney Levy is under indictment in Dade County for alleged BRIBERY of zoning officials. (See Ex D, attached, and incorporated herein by this reference.)

"11. As another example of the gross discrimination against plaintiff in the subdivisions of Wellington, and other which are various states of development, there are these instances of 1974 assessed value of unimproved parcels thereof at a small percentage (like 2% or less) of the Lucom tract assessment, such as:

"(a) 535.89 acres at an assessed value of $311.20 per acre (which assessed value is less than the 1974 annual TAX on the Lucom tract). Assess-

ment identification code 00-41-44-18-00-000-9000, assessed value $160,700.67 or 50% of the appraised *market value* indicated on assessment roll of $321,-534.00. owner Lucille Wellington, et al trustees.

"(b) Also in Wellington, 365.58 acres with a 1974 assessed value of $146,282.00 or $400.00 per acre assessed value. Assessment identifying code 00-41-44-06-00-000-9000, owner Ibid.

"(c) For nearby Royal Palm Beach Colony, Inc., 426 Acres assessed at $142,800.00 or $335.00 per acre, and

"(d) Another example, 542.27 acres of land assessed at $162,771.00 or $300.00 per acre (code 00-41-44-0700-000-9000).

"12. The degree of gross discrimination against plaintiff being twenty times that of abutting and adjacent land similarly zoned and situated is so extreme as to make them in law a fraud and void.

"13. The Lucom tract at January 1, 1974 was in fact virtually unsaleable because of the illegal appropriation as a park (see paragraph 28, et seq, infra), and 1974 assessment is many times its just or market value on January 1, 1974.

"14. Upon learing (sic) of the 1974 Tax Bill for the Lucom tract, plaintiff has contacted the appraiser's office, providing it with maps (e.g. Ex. A and B, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy.

"(a) defendant STAHMAN prepared a report to cover up the conspiracy and attempt to justify same.

"(b) defendant REID, apparently joined by new co-conspirators, decided to refuse corrective adjustment of the illegal assessment on the grounds that (A) it would not be politically expedient for

him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of the tax rolls in November, 1974, he issued over 1685 certificates of correction many of which were for incorrect values assessed).

"(c) Defendant REID denies plaintiff a copy of, or access to the report identified in paragraph 14(a), supra.

"(d) Defendant REID refuses to justify or explain to plaintiff any basis on which the Lucom tract was assessed for 1974.

"(e) Defendant REID then caused to be sent to plaintiff letter attached as Ex C from said H. Irwin Levy, et al, falsely stating REID lacked authority to correct the Lucom assessment.

"15. As to judicial review in the Florida state courts, Florida Code section 194.171, as presently amended, reposes exclusive original jurisdiction at law in its circuit courts, but limits such action to 60 days after certification of rolls for collection, and makes a condition precedent the payment of tax which the taxpayer in good faith believes to be owing. The tender of said amount has been rejected (see Ex F, annexed, and incorporated herein by this reference).

"16. Although the appraiser has the continuing duty to correct, at any time, improper assessment, and defendant has so acted in over 1685 cases after certification of the 1974 assessment roll, (see paragraph 14(b), supra, he refuses to change the Lucom 1974 assessment even though he cannot justify it, and Florida law provides the aggrieved plaintiff no method of judicially forcing him, under these circumstances, to act, though leaving the appraiser sole arbitor of his granting or withholding corrective action.

"17. The 1974 Lucom tract assessment are (sic) (A) void as being made in violation of controlling law, (B) intentionally, grossly and outrageously discriminatory, and (C) violative of plaintiff's federal constitution rights under the Fourteenth Amendment to Equal Protection under law.

"18. Defendant Tax Collector ALLEN C. CLARK threatens and intends to sell the property for aforesaid taxes on or about May 30, 1975, per Ex G, attached and incorporated herein by reference.

"19. Plaintiff is without an adequate remedy at law and will be seriously and irreparably harmed if the aforesaid sale of May 30, 1975, (see paragraph 18, supra.), is not enjoined by this Court.

"20. Plaintiff is without a clear remedy, under the circumstances of this case, in the State Courts of Florida."

Whereas, the appraised value of the Lucom tract was thus set at $10,983,400 for 1974; it was reduced 70% for 1975, or $3,298,020 as was before the District Court (Appendix B, pages 17a, 18a and 19a), having been determined after the filing of the Complaint but tendered during the decisional process. This constitutes an implicit admission that the 1974 assessment was excessive by 70% or $7,685,400, a figure so gross both relatively and absolutely as to constitute fraud as a matter of law.

The FOURTH Count alleges that despite all of the foregoing, Appellee Reid, in whom a statutory discretion to correct 1974 assessments still reposes and which is not subject to judicial review but was used 1685 times for assessment year 1947 (para. 14 and 16 of Complaint (Appendix pages 7a and 8a), has refused

for political reasons (complaint para. 14(b) (A)), all in violation of 42 USC 1986.

The FIFTH Count incorporates all of the foregoing and asks that the assessment be declared void as violative of the equal protection clause of the federal constitution.

Each of the five counts seeks damages under 42 USC 1985 or 1986.

The District Court dismissed the entire Complaint on Appellees' Motion to Dismiss prior to answering, solely on the basis of lack of jurisdiction because of 28 USC 1341.

This case has not previously been before this court.

JURISDICTION

(a) Jurisdiction is founded on 28 USCA 1343 giving the District Court original jurisdiction in cases under 42 USCA 1985 and 1986.

(b) Additionally, jurisdiction is founded on diversity of citizenship and amount. Plaintiff is a citizen of the State of Maryland. All defendants are citizens of the State of Florida. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

(c) Additionally, jurisdiction is founded on the existence of a Federal question and the amount in controversy. The action arises under the Fourteenth Amendment of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

REASON FOR GRANTING THE WRIT

1. The order granting dismissal in this case is in conflict with the Third Circuit's opinion in *Bamford* v. *Garrett,* 538 F 2d 63 (reversing 394 F Supp. 902) (cert. den. 11/29/76) which reversed a district court's granting of a motion to dismiss a complaint alleging facts similar to those in this Lucom case.

Pertinent parts of the 3 CCA's decision in *Bamford, supra,* are:

> Since this case comes to us from a jurisdictional dismissal granted on defendants' motion pursuant to Fed. R. Civ. P. 12(b)(1), the only "facts" are the allegations of the complaint. These must be taken as true for the purposes of our review. *Walker, Inc.* v. *Food Machinery,* 382 U. S. 172, 174-5 (1965); *Curtis* v. *Everett,* 489 F. 2d 516, 518 (3d Cir. 1973), *cert. denied sub nom. Smith* v. *Curtis,* 416 U. S. 995 (1974).

Referring to 26 U.S.C. 1341, the CCA decision states:

> It thus appears that the statute had a twofold purpose: eliminating unfair advantage of foreign corporations over citizens of the state and eliminating the ability of foreign corporations interminably to withhold payment of local taxes and to disrupt local financing. See *Tramel* v. *Schrader,* 505 F. 2d 1310, 1315-6 (5th Cir. 1975); *Hargrave* v. *McKinney,* 414 F. 2d 320, 325-6 (5th Cir. 1969).
>
> An additional point is worthy of note. In his Senate floor discussion of the Tax Injunction Act, its chief sponsor, Senator Bone, introduced portions of the Judiciary Committee report on the prior Johnson Act, which applied similar retraints to federal injunctions against orders of state administrative agencies. Senator Bone stated that the following quotation was "applicable to

[the Tax Injunction Act] in the same manner that [it was] applicable to the Johnson bill." 81 Cong. Rec. at 1416 (1937).

"The wealthy individual or corporation is thus often enabled to wear out his opponent and compel him to settle or submit to an unjust judgment for the very reason that his opponent is not financially able to follow him through the tortuous and expensive route through the Federal court to the Supreme Court of the United States at Washington. *And all the time in this dispute there is no Federal question involved.* There is a dispute arising under a State statute or law of other origin and nothing more."

Id. at 1416 [emphasis supplied.] This concept from the Congressional Record, coupled with Congress' apparent concern to limit the ability of *foreign* corporations to use the *diversity* jurisdiction, at least suggests that Congress did not intend the Tax Injunction Act to bar federal courts from entertaining challenges to state taxes when such such challenges were based on federal law.

* * *

III

Under the 1973 Act, the inquiry into state remedies seeks to ascertain whether the state, in this case Pennsylvania, provides plaintiffs with a "plain, speedy, and efficient remedy" for adjudicating the claims alleged in their complaint. Supreme Court decisions construing this statutory language offer two essential points of guidance. First, although it can be argued that Congress meant to establish a more stringent standard for federal intervention, the decisions indicate that "plain, speedy and efficient" means no more than the prior equity standard of "adequacy". Second, it is sufficient for a finding of inadequacy that the availability of the state remedy be merely uncertain. Hart and

Wechsler, *supra,* note 7, at 979. *Spector Motor Service, Inc.* v. *O'Connor,* 340 U. S. 602, 605 (1951); *Township of Hillsborough* v. *Cromwell,* 326 U. S. 620 (1946); *Spector Motor Service, Inc.* v. *McLaughlin,* 323 U. S. 101 (1944).

* * *

This statutory remedy is clearly designed for an individual taxpayer to appeal his individual assessment.

* * *

Where legal remedies require multiple suits involving identical issues against the same defendant, federal equity practice has recognized the inadequacy of the legal remedy and has provided a forum. *Matthews* v. *Rodgers,* 204 U. S. 521, 529-30 (1932); *Hale* v. *Allinson,* 188 U. S. 56, 78 (1903). *See* 16 Minn. L. Rev. 679, 683 (1932).

* * *

A denial of a federal forum in the instant case would allow a state to depend upon burdensome piecemeal review procedures as an effective defense to an allegedly unconstitutional tax structure. Such a result would stand the legislative intent of section 1341 on its head.

2. The order of dismissal and its per curiam affirmance are so violative of the standard set by this Court as to require the exercise of its power of supervision.

It is axiomatic that "For purposes of ruling on a motion to dismiss for want to standing (or jurisdiction) both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party; e.g., *Jenkins* v. *McKeithen,* 395 U. S. 411, 421-2 (1969)." (parenthetic matter added); *Warth* v. *Seldin,* 422 U. S. 490, at 501-2.

F.R.C.P. 8(e)(2) provides "When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements." *A fortiori,* a separate count which is itself sufficient is not made insufficient by the insufficiency of a different count.

Thus, viewed separately the Second Count is totally unrelated to the bar of 28 U.S.C. 1341 in that it does not involve state taxation and it was clear error to dismiss it for that, the only ground stated.

Similarly, the *Fourth Count* is restricted to Appellee Reid's failure, in violation of 42 U.S.C. 1986 and for improper motives and arbitrarily, to exercise his statutory discretion to correct an implicitly admitted error (Appendix A, page 15a) while there is no judicial review available for his failure to so act. Whatever might be said as to the sufficiency of Florida law to meet the criteria required by 28 U.S.C. 1341, there is no Florida remedy for the arbitrary and discriminatory refusal, in violation of 42 U.S.C. 1986, to exercise this power and there is no corresponding judicial review. Hence, 28 U.S.C. 1341 is inapplicable and redress is appropriate under 42 U.S.C. 1986, and dismissal of the Fourth Count was error.

As to the THIRD Count which alleges that the Appellee Assessor Reid joined the conspiracy alleged in the Second Count and performed in bad faith all of the acts attributed to him and Appellee Stahman in Count One, clearly can not be used to exculpate all Appellees for this monstrous furtherance of their conspiracy, nor indeed can Appellees Reid and Stahman use 28 U.S.C.

1341 as a shield against 42 U.S.C. 1985 damages from a general conspiracy which went far afield from the purview of 28 U.S.C. 1341. Therefore, the District Court erred in dismissing said Third Count.

As to the First Count, standing alone, the Florida law fails to meet the criteria required by 28 U.S.C. 1341 as a prerequisite to its jurisdictional bar, namely, that (a) in the circumstances of this case there is no state remedy and (b) in its recently revised statutes and post-*Cosen* decisional law, infra, there is only a requirement of just value in assessment rather than the dual standard of just value and equality required by the controlling *Sioux City Bridge* case, 260 U. S. 441. Hence, dismissal of Count One was error.

Count Five for this same reason as Count One, was improperly dismissed. Trying to apply the two criteria essential for invoking 28 U.S.C. 1341, namely (a) availability of a "plain, speedy and efficient remedy" and (b) that each remedy sought is to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax. As to criteria (a), supra, it clearly has no applicability to either the Second or Fourth Count, could have only theoretical applicability to the Third Count, and is in fact not available to the First Count because both Florida statutes and decisional law require only "just value" and not "equality" and make no remedy available for denial of the latter.

As to criteria (b), supra, it is totally inapplicable to the Second Count, and the Fourth Count which presumes that same do not occur. These criteria are of only limited applicability to part of relief sought under the remaining Counts.

3. This Court has not yet passed on the issue of whether a county may effectively confiscate realty by zoning it as a park.

This is the graveman of Count Two of the complaint and is ignored in the decision.

4. The recent decisions of the Supreme Court of Florida hold equality not necessary in real estate tax thus contradicting the standard of both fair and equal required by this Court in *Sioux City Bridge* v. *Dakota County,* 260 U. S. 441 at 446 thus undermining the constitutional requirements and precluding applicability of 28 U.S.C. 1341.

In *Spooner* v. *Askew,* 345 S. 2d 1055, decided 12/22/76 the Florida Court held:

> A taxpayer in Florida who is taxed at or under 100% of fair market value has never had standing to complain of an allegedly lower assessment level applied to taxpayers in another taxing unit. Neither *Salter* nor *Southern Bell* suggest otherwise. The problem in those cases, which the Court found both cognizable and remediable, came about "because the sworn official has not performed the duty requiring him to assess all property at its full cash value. The taxpayers in this case complain because their sworn official performed his responsibility too well.
>
> The mandate of "just valuation" derives from the Constitution. The requirement of statewide uniformity derives from statute. The latter is more a goal than a compellable right, and it would be naive to have expected instant statewide uniformity (assuming it can ever be achieved) merely because that goal had been announced by law. The Legislature commendably desired to create uniformity of assessments in Florida, but its ability

> to do so must remain conditioned by the Constitution's directive that a class of county officers are assigned the primary responsibility to perform assessment functions. At best the legislative goal can be achieved only incrementally through cooperative efforts of the assessors and the Department, and by the development of procedures which will accommodate the responsibilities of both. That these procedures had not evolved to the point of flawless harmony in 1973 was not a basis to conclude that Gadsden County taxpayers were denied equal protection of the law under either the Florida or federal Constitution.

Sioux City Bridge v. *Dakota County,* 260 U.S. 441, at 446, held:

> This Court holds that the right of the taxpayer whose property alone is taxed at 100 per cent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standard of true value and the uniformity and equality required by law, the law latter requirement is to be preferred as the just and ultimate purpose of the law.

Hillsborough v. *Cromwell,* 326 U.S. 260, holds that:

> The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satis-

fied if a State does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of seeking an upward revision of the taxes of other members of the class. *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441, 445-447; *Iowa Des Moines National Bank* v. *Bennett,* 284 U.S. 238, 247; *Cumberland Coal Co.* v. *Board of Revision,* 284 U.S. 23, 28-29.

It then discusses the jurisdiction of the New Jersey Board of Equalization and dismisses it as an adequate remedy because it could not grant reduction to comparables of one discriminated against but could only consider over-assessment of complainant's property as compared to full value. This remedy is dismissed as inadequate, and in the additional New Jersey remedy of right of suit to raise assessment of underassessed comparables is likewise dismissed as inadequate. (In this Lucom case that the Palm Beach County Board of Tax Adjustment similarly are restricted to only matters of overassessment of complainant's property as compared to full cash value see F.S.A. 194.032(1)(a), 194.011(3), and 193.011. Additionally, Florida has no procedure for our aggrieved property owner to seek upward revision of under assessed comparables.)

Hillsborough then stated:

"In any event, there is such uncertainty concerning the New Jersey remedy as to make it speculative (*Wallace* v. *Hines,* 253 U.S. 66, 68) whether the State affords full protection to the federal rights. In the second place, the state board of tax appeals to which respondent might have appealed concededly has *no right to pass on constitutional questions.*"

"Accordingly we conclude that there was such uncertainty surrounding the adequacy of the state remedy as to justify the District Court in retaining jurisdiction of the cause. While the charges of discrimination in the complaint were denied, *the jurisdiction of the District Court is determined by the allegations of the bill* (*Hart* v. *B. F. Keith Vaudeville Exchange,* 262 U.S. 271) which here were substantial.

"In the present case it appears that respondent's opportunity to appeal to the State Board of Tax Appeals had expired even before the District Court ruled on the motion to dismiss. And it is not clear that today respondent has open any adequate remedy in the New Jersey courts for challenging the assessments on local law grounds."

"Hence, the reason for holding the case in *Spector Motor Co.* v. *McLaughlin,* supra, and remitting the complainant to the state courts for determination of the local law question no longer was existent here.

"It follows *a fortiori* that the bill should not have been dismissed. As stated in *Greene* v. *Louisville & I.R. Co.,* 224 U.S. 499, 520, 'A remedy at law cannot be considered adequate, so as to prevent equitable relief, *unless it covers the entire case made by the bill in equity.*' Though the availability of a state remedy on the local law question be assumed to exist, so much uncertainty surrounds the New Jersey remedy to protect the taxpayer's federal right that a refusal to dismiss the bill was a proper exercise of discretion. Thus, however the case may be viewed, the exceptional circumstances which we have noted take it out of general rule of *Great Lakes Dredge & Dock Co.* v. *Huffman,* supra. The District Court, therefore, properly proceeded to decide the case on the merits. That it placed its decision on local law grounds is not ob-

jectionable. For it is well settled that where the federal court has jurisdiction, it may pass on the whole case and agreeably with the desired practice decide it on local law questions, without reaching the constitutional issues. *Siler* v. *Louisville & N.R. Co.,* 213 U. S. 175, 191, 193; *Greene* v. *Louisville I.R. Co.,* supra, p. 408; *Chicago G.W.R. Co.* v. *Kendall,* 266 U.S. 94, 97-98; *Risty* v. *Chicago, R. I. & P.R. Co.,* 270 U.S. 378, 387; *Waggoner Estate* v. *Wichita County,* 273 U.S. 113, 116; *Hurn* v. *Oursler,* 289 U.S. 238, 243-248." (emphasis added)

Controlling Florida Supreme Court cases deny reduction of an assessment below full cash value even where equality would require same.

In *Cosen Inv. Co., Inc.* v. *Overstreet,* 17 S.2d. 788, the Florida Supreme Court *En Banc,* renouncing the lower but equal principle, held:

"Appellant filed a bill against the Tax Collector of Dade County to enjoin the collection of a portion of the taxes assessed against its property upon the ground that its property had been assessed at its approximate cash value whereas other nearby property had been assessed at approximately seventy-five per cent of its cash value. From a decree dismissing the bill an appeal is taken. Appellant relies upon our opinion, *Camp Phosphate Co.* v. *Allen,* 77 Fla. 341, 81 S. 503. This case does not support appellant because, as was pointed out there, the purpose of the law was to render the tax burden uniform, equal and just and if all property was assessed at fifty per cent of its cash value the purpose of the law was carried out. Such logic is not now tenable because, by the adoption of Art. X, Sec. 7, to the Florida Constitution, homesteads to the extent of $5,000 are exempt from taxation.

"To perpetuate the practice of assessing all property at a less percentage than that directed by the statute (Chap. 20722, Acts 1941, F.S.A. § 193.11) would necessarily result in favoring the homesteads. The logic of the opinion in *Camp Phosphate Co.* v. *Allen,* supra, is no longer applicable because the reduced value, even though uniformly lower, is no longer just. Subsequent to the adoption of Art. X, Sec. 7, the practice of assessing property has been in conformity with the statute, that is at one hundred per cent of its true cash value.

"To grant appellant's request would require us to order a constitutional, official act contrary to the statute and by so doing the effect of his act would result in rendering unequal the tax burden to the taxpayers of Dade County.

"The decree is affirmed."

In *Dade Co.* v. *Salter,* 194 S. 2d. 587 the aforesaid *Cosen* opinion was reaffirmed, and even on rehearing when the *Sioux City Bridge* case, *supra,* was called to its attention, again reaffirmed *Cosen,* holding at p. 591.

> "In *Cosen Investment Co., Inc.* v. *Overstreet* 154 Fla. 416, 17 S. 2d. 788 (relied upon so heavily in the opinion), there was no allegation that *all of the property of the county* was assessed at less than its full cash value. The allegation there was that similar property was assessed at less value than plaintiff's property. There the Court correctly held under the facts there before us that 'to perpetuate the practice of assessing all property at a less percentage than that directed by statute . . . would necessarily result it favoring the homesteads.'"

Thus the status of the Florida Supreme Court reaffirmed law (En Banc) is that in this Lucom situation it would have to be alleged and "proven" in *Salter,* 194 S. 2d. 590, that *all others* were under-assessed to prevail in its action, although conceding at (ID. p. 591) that in *Sioux City, supra*), the U. S. Supreme Court held otherwise:

> "To adhere to the opinion which has been filed would require *these taxpayers,* and *other taxpayers who might find themselves in the same position in any of the sixty-seven counties in this State,* to successfully institute and prosecute proceedings to require the assessor to raise *all other* properties in the county to the statutory valuation, a burden which in most instances would amount to depriving the taxpayer of any remedy whatever, in order to obtain relief. This question was also considered by the Supreme Court of the United States in *Sioux City Bridge Co.* v. *Dakota County,* supra, where Mr. Chief Justice Taft, again speaking for the Court, said:
>
> '. . . The conclusion in these and other federal authorities is that such a result as that reached by the Supreme Court of Nebraska is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of underassessed property in the taxing district.' " (emphasis added)

Thus, as to that portion of the 1974 Lucom assessment below full cash value and above the range of assessed value of comparable properties, no cause of action would be recognized by the Florida Court unless plaintiff could establish that only her property out of the 200,000 parcels in Palm Beach County was assessed at full cash value. As the U. S. Supreme

Court said, supra, this "is to deny the injured taxpayer any remedy at all."

The aforesaid status of the Florida law is conducive to the type of "spot assessment" of a parcel selected for abuse as alleged, by a conspiracy to harass a property owner whose parcel has been earmarked for public use and, without any compensation is subjected to a campaign to frustrate *any* normal use of the property and subjected to discriminatory assessments twenty times that of similar and abutting properties—and leave the aggrieved property owner without any remedy.

The unconstitutional *Cosen* rule has been generally followed in Florida, e.g., *Sproul* v. *Royal Palm Yacht Club, Inc.,* 143 S. 2d. 900, a Palm Beach County case which held:

> "In its complaint the plaintiff alleged that several other pieces of property in the county similar to its property were assessed at a much lower valuation but nowhere in its complaint has the plaintiff alleged that its property is assessed in excess of its actual full cash value. The defendants filed a motion to dismiss the complaint but the court below denied the same, and hence this appeal.
>
> "The particular point presented in this interlocutory appeal is whether or not the complaint states a cause of action for injunctive relief in a challenge to the real estate assessment of the county tax assessor when it fails to allege that such assessment is in excess of the actual full cash value of the property.
>
> "The order of the lower court is reversed and the cause is remanded with direction for the entry of an order dismissing the complaint filed in this case."

In *Schooley* v. *Sunset,* 185 S. 2d. 1 at 4 the Second District, after struggling with the contradiction of controlling U. S. Supreme Court cases (e.g., *Sioux City Bridge, supra*)—and the unconstitutional holding of *Cosen, supra,* remanded a case for inconsistent disposition, and suggested, apparently in desperation over how to comply with the *Sioux City Bridge doctrine,* that maybe the taxpayer who had been assessed unequally high might be given a credit on future taxes. The decision spares us the torture of how such a relief might be lawfully done under present Florida statutes. Clearly, such tenuous and doubtful a remedy is not a "plain, speedy and efficient" remedy since it does violence to all related statutes. (See *Hillsborough* v. *Cromwell,* 326 U.S. 620 at 625 "In any event, there is such uncertainty concerning the New Jersey remedy as to make it speculative [*Wallace* v. *Hines,* 253 U.S. 66, 68] whether the State affords full protection to the federal rights").

The said *Schooley* v. *Sunset* case, *supra,* reads in pertinent part:

> "We are not unmindful of the decisions in *Cosen Inv. Co., Inc.* v. *Overstreet,* 154 Fla. 416, 17 S. 2d 788 (1944), and *Sproul* v. *Royal Palm Yacht & Country Club, Inc.,* 143 S. 2d 900 (D.C.A. Fla. 1962), which appear to hold that a taxpayer is entitled to no such relief under the circumstances of this case unless his property was assessed in excess of full cash value. In those cases, however, the constitutional question of equal protection was not raised nor was there any claim or *systematic, deliberate, and intentional* undervaluation of other property on a countywide basis as was made in the instant case."

> "The portion of the decree denying plaintiff any affirmative relief is therefore reversed and the cause remanded for the purpose of determining the best way to afford plaintiff relief for the past discrimination. We point out that to do this it is not necessary to void the 1963 tax roll or the roll of any subsequent year. *At least one acceptable method would be to allow plaintiff a credit against future taxes for the amount determined discriminatory for the year 1963.*" (emphasis added)

Controlling U.S. Supreme Court Cases uphold injunction where only inadequate, doubtful or uncertain remedy exists in state.

CONCLUSION

The complaint properly alleging confiscation of realty by zoning it as a park and related taxation at twenty times that of similar abutting land, plus Florida lack of equality in assessment cry out for review by this Court lest the practice spread.

The petition for certiorari should accordingly be granted.

Respectfully submitted,

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Washington, D.C. 20004

Attorney for Petitioner

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

(West Palm Beach Division)

VIRGINIA W. LUCOM, *Plaintiff*,

v.

DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida; ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida; J. ED STRAUGHN, as Executive Director, Florida Department of Revenue; DAVID L. REID; CHARLES H. STAHMAN; CCLONEL E. W. EFFINGER; MICHAEL C. SMALL; ROBERT JOHNSON; ROBERT CULPEPPER; ALAN CIKLIN, *Defendants.*

Civil Action No. .....

Complaint for

(A) Damages Resulting from Denial Under Color of Law of U.S. Constitutional Equal Protection

(B) Enjoining of Tax Sale Under Void Assessment unauthorized by law

(C) Enjoining Further Harassment in Normal use of Private Realty For uses other than Public Land or Park

(D) Declaratory Relief and

(E) Injunction to Assess According to Law

(Filed April 28, 1975)

Complaint

JURISDICTION

1. (a) Jurisdiction is founded on 28 USCA 1343 giving this Court original jurisdiction in cases under 42 USCA 1985 and 1986, as hereinafter appears.

(b) Additionally, jurisdiction is founded on diversity of citizenship and amount. Plaintiff is a citizen of the State of Maryland. All defendants are citizens of the State of Florida. The matter in controversy, exceeds exclusive of interest and costs, the sum of ten thousand dollars.

(c) Additionally, jurisdiction is founded on the existence of a Federal question and the amount in controversy. The action arises under the Fourteenth Amendment of the Constitution of the United States as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

THE PARTIES

2. The plaintiff, VIRGINIA W. LUCOM, a citizen of the State of Maryland, brings this action as a private citizen over matter arising out of her ownership of about 545 acres of land situated in Palm Beach County, State of Florida.

3. Defendants.

(a) DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(b) ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

(c) J. ED STRAUGHN, as Executive Director, Florida Department of Revenue;

(d) DAVID L. REID, individually, acting under color of law as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(e) CHARLES H. STAHMAN, acting under color of law as Supervisor, Land Department, Office of Property Appraiser (formerly Tax Assessor) Palm Beach County, Florida;

(f) COLONEL E. W. EFFINGER, acting under color of law as County Palnner for Palm Beach County, Florida;

(g) MICHAEL B. SMALL, acting under color of law as former County Attorney for Palm Beach County, Florida;

(h) ROBERT JOHNSON, acting under color of law as County Commissioner for Palm Beach County, Florida;

(i) ROBERT CULPEPPER, acting under color of law as County Commissioner for Palm Beach County, Florida;

(j) ALAN CIKLIN, acting under color of law as former Assistant County Attorney for Palm Beach County, Florida.

FIRST COUNT

(Defendant REID, under color of law has conspired with others to defraud plaintiff of over $240,000.00 for 1974 by an illegal, void, and grossly discriminatory assessment twenty times more than comparable property in violation of 42 USC 1985.)

4. Plaintiff realleges paragraphs 1, 2, and subparts (a), (b), (d), and (e) of paragraph 3, above.

5. Defendant DAVID REID under color of law, intentionally, invidiously grossly and arbitrarily discriminated against plaintiff by illegally spot re-assessing unequally her 545 acres of unimproved land, zoned "agriculture", from approximately $490,000.00 (or about $890.00 per acre) for a property tax of about $13,000.00 for 1973, to a 1974 assessed value of $10,993,400.00 at a 1974 property tax of $263,353.73, an increase in assessed value of about twenty-two times, or about $10,500,000.00 more assessed value without any change in zoning or present use, thus

using a discrimination so gross as to amount in law to be a fraud whereby plaintiff will be defrauded out of over $240,000.00 for 1974 property tax in violation of her federal constitutional right of equal protection under law and in violation of 42 USC 1985 by his conspiracy with others in its accomplishment as hereinafter alleged. Scores of parcels of abutting adjoining or nearby land, with identical zone and use, are uniformly assessed in a range for 1974 assessment of $800.00 to $1,200.00 per acre (per Ex. A, attached map, incorporated herein by this reference) or about one twentieth of that of plaintiff's land.

6. (a) During the latter part of 1973 and during 1974 defendant CHARLES STAHMAN conspired with defendant DAVID L. REID and others presently unknown to plaintiff to specially re-assess in a grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed land on the west side of the Town of Greenacres City, in furtherance of which plan, and under color of law, defendant did raise the assessment of the Lucom tract by over twenty times, without properly notifying the plaintiff.

(b) The Town of Greenacres City was not generally re-assessed for 1974 assessed value.

(c) Other parcels in the County abutting, contiguous to, or in close proximity to the Lucom tract which were zoned "agriculture" were not re-assessed as part of the special discriminatory re-assessment alleged in paragraph 6 (a), supra.

7. The Lucom tract 1974 assessed value of about $20,-000.00 per acre (see paragraph 5, supra.) is about twenty times that of abutting, contiguous, adjoining and all nearby acres similarly zoned agriculture as is established from Map of Comparables, (Ex A, annexed hereto and incorporated herein by this reference) which shows the assessment code, location, and 1974 assessed value per acre of

dozens of comparable and similarly zoned "agricultural" parcels surrounding the Lucom tract. The gross disparity of twenty to one is the result of an intentional plan and system to invidiously discriminate against the plaintiff and the aforesaid conspiracy to thus deprive her of equal protection under law by virtue of manner in which said defendant REID administers same.

8. The Lucom tract 1974 assessed value of about $20,-000.00 per acre (see paragraph 5, supra.) is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling unites per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned "Agriculture"—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit 8, annexed hereto and incorporated herein by this reference) which shows the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below the Lucom tract, yet having zoning for a much higher use. Plaintiff can not find any parcels so highly assessed as those which were the object of the conspiracy described in paragraph 6 (a), supra.

9. Plaintiff has been informed that there is no other unimproved lond zoned "agriculture" in the entire Palm Beach County which has been assessed at a value approaching $20,000.00 per acre for 1974, and believing same, so avers.

10. As a further and telling example of the intentional, gross and invidious discrimination by defendant REID, REID appraised at $6,500.00 per acre for 1974 a parcel of acres in Century Village zoned RH (for eighteen units per acre having identifying assessment code 00-42-43-23-13-000-0021 and owned by Century Village, Inc. whose president is H. Irwin Levy, Esquire, who also advertises his firm Levy, Plisco, Perry, Reiter, and Shapiro as attorney

for said Appraiser DAVID L. REID, and so acts (see Ex C, annexed, incorporated herein by this reference) and said appraiser's attorney Levy is under indictment in Dade County for alleged BRIBERY of zoning officials (see Ex D, attached, and incorporated herein by this reference.)

11. As another example of the gross discrimination against plaintiff in the subdivisions of Wellington, and other which are various states of development, there are these instances of 1974 assessed value of unimproved parcels thereof at a small percentage (like 2% or less) of the Lucom tract assessment, such as:

(a) 535.89 acres at an assessed value of $311.20 per acre (which assessed value is less than the 1974 annual TAX on the Lucom tract). Assessment identification code 00-41-44-18-00-000-9000, assessed value $160,700.67 or 50% of the appraised *market value* indicated on assessment roll of $321,534.00, owner Lucille Wellington, et al trustees.

(b) Also in Wellington, 365.58 acres with a 1974 assessed value of $146,282.00 or $400.00 per acre assessed value. Assessment identifying code 00-41-44-06-00-000-9000, owner Ibid.

(c) For nearby Royal Palm Beach Colony, Inc., 426 acres assessed at $142,800.00 or $335.00 per acre, and

(d) An other example, 542.57 acres of land assessed at $162,771.00 or $300.00 per acre (code 00-41-44-0700-000-9000).

12. The degree of gross discrimination against plaintiff being twenty times that of abutting and adjacent land similarly zoned and situated is so extreme as to make them in law a fraud and void.

13. The Lucom tract at January 1, 1974 was in fact virtually unsaleable because of the illegal appropriation as a park (see paragraph 28, et seq., infra), and 1974

assessment is many times its just or market value of January 1, 1974.

14. Upon learning of the 1974 Tax Bill for the Lucom tract, plaintiff has contacted the appraiser's office, providing it with maps (e.g. Ex A and B, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy.

(a) defendant STAHMAN prepared a report to cover up the conspiracy and attempt to justify same

(b) defendant REID, apparently joined by new co-conspirators, decided to refuse corrective adjustment of the illegal assessment on the grounds that (A) it would not be politically expedient for him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of the tax rolls in November, 1974, he issued over 1685 certificates of correction many of which were for incorrect values assessed).

(c) Defendant REID denies plaintiff a copy of, or access to the report identified in paragraph 14 (a), supra.

(d) Defendant REID refuses to justify or explain to plaintiff any basis on which the Lucom tract was assessed for 1974.

(e) Defendant REID then caused to be sent to plaintiff letter attached as Ex C from said H. Irwin Levy, et al, falsely stating REID lacked authority to correct the Lucom assessment.

15. As to judicial review in the Florida state courts, Florida Code section 194.171, as presently amended, reposes exclusive original jurisdiction at law in its circuit courts, but limits such action to 60 days after certification of rolls for collection, and makes a condition precedent the payment of tax which the taxpayer in good faith believes to be owing. The tender of said amount has been

rejected (see Ex F, annexed, and incorporated herein by this reference).

16. Although the appraiser has the continuing duty to correct, at any time, improper assessment, and defendant has so acted in over 1685 cases after certification of the 1974 assessment roll, (see paragraph 14 (b), supra, he refuses to change the Lucom 1974 assessment even though he cannot justify it, and Florida law provides the aggrieved plaintiff no method of judicially forcing him, under these circumstances, to act, though leaving the appraiser sole arbitor of his granting or withholding corrective action.

17. The 1974 Lucom tract assessment are (A) void as being made in violation of controlling law, (B) intentionally, grossly and outrageously discriminatory, and (C) violative of plaintiff's federal constitution rights under the Fourteenth Amendment to Equal Protection under law.

18. Defendant Tax Collector ALLEN C. CLARK threatens and intends to sell the property for aforesaid taxes on or about May 30, 1975, per Ex G, attached and incorporated herein by reference.

19. Plaintiff is without an adequate remedy at law and will be seriously and irreparably harmed if the aforesaid sale of May 30, 1975, (see paragraph 18, supra.), is not enjoined by this Court.

20. Plaintiff is without a clear remedy, under the circumstances of this case, in the State Courts of Florida.

21. The aforesaid acts of defendants REID and STAHMAN are compensible under 42 USC 1985 as a conspiracy to deprive plaintiff of equal protection under state law in deprivation of her rights under the federal constitution, and plaintiff has been damaged by said defendants' acts to the extent of two million dollars ($2,000,00.00).

22. Plaintiff, during 1952, bought for about $55,000.00, approximately 545 acres of unimproved contiguous real estate situated in Palm Beach County and located west of Jog Road and both North and South of Forest Hill Blvd. in said county. No improvements have been made to or upon Plaintiff's said land and it remains in a natural unimproved state and no provisions have been made for utility services, such as water and sewer for said land.

23. For the Florida Property Assessment year 1973, with a tax day of January 1, 1973, the entire aforesaid Lucom tracts were assessed at a value of approximately $490,000.00, or approximately $890.00 per acre.

24. For the Assessment year 1974, with a tax day of January 1, 1974, the same entire aforesaid Lucom tracts were assessed at a value of $10,993,400.00, of approximately $20,000.00 per acre.

25. Plaintiff received no notice of increase from prior years assessed valuation for 1974 assessment, and she first learned of same from tax bill sent her late in 1974.

26. At all times here pertinent (and plaintiff verily believes ever isnce her acquisition in 1952), and certainly on the tax days of January 1, 1973 and January 1, 1974, the aforesaid Lucom tracts were and are zoned "Agriculture" and accordingly on said 1973 and 1974 tax days as well as now restricted to one dwelling unit for every five acres.

27. The aforesaid Lucom tracts produce no income for plaintiff.

28. On or about December 7, 1952, the Palm Beach County Area Planning Board, without notice to the plaintiff, adopted and caused to be published its official land Map, (see Ex E, annexed, and incorporated herein by this reference) classifying most of the aforesaid Lucom tracts for institutional use. To date no one has offered to compensate the plaintiff for such dedications, presently or prospectively.

29. On or about October 8, 1973, plaintiff caused said Lucom tracts to be annexed into the abutting Town of Greenacres City but specifically retaining the "Agriculture" zoning and development restrictions aforesaid, in paragraph 5, supra, (see Greenacres Ordinances # 154 and # 153 and development zoning restrictions of one dwelling for each five acres attached as Ex H and I, respectively).

30. During 1973 various officials of Palm Beach County illegally under color of law and privately opposed denounced and criticized the aforesaid annexation (see e.g., Ex J, K, L, and M annexed and incorporated herein by this reference).

31. During 1973 various officials of Palm Beach County under color of law and privately (see e.g., Ex J, K, L, M, and N, annexed and incorporated herein by this reference) prevented or caused to be denied any zoning change for the aforesaid Lucom tracts by (a) public denounciation (b) threats of reprisal (c) institution of injunction suit (d) intimidation (e) promising under color of law, to overrule any zoning change by referring same on the county's motion to the South Florida Regional Planning Council as an area of Regional Impact under an improper and illegal interpretation of the legal standard for reference (which would require an expenditure of many thousands of dollars by plaintiff for studies and plans and delays of years) and (f) generally, by any means at their disposal to impede and frustrate any use of the Lucom tract for other than park or public institutional use as assigned it on the aforesaid Land Use Plan.

32. Defendant STRAUGHN is hereby joined in this action for his failure to properly supervise defendant REID, as required by law, and as principal revenue official of the State of Florida.

33. Delay of the threatened tax sale (see paragraph 18, supra.) will in no wise harm the taxing communities or jeopardize collection as the disputed assessment will remain as a well secured first lien on the otherwise unencumbered valuable Lucom tract.

WHEREFORE, under the First Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID and STAHMAN (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra., and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

SECOND COUNT

(Various Defendants have conspired to effect a partial taking of Plaintiff's Property, under color of law, be arbitrarily classifying it as a park, without compensation, in violation of 42 USC 1985.)

34. Paragraphs 1, 2, 3f, 3h, 3i, 3j, 28 an. 29 all supra., are incorporated herein by this reference.

35. During 1973 various officials of Palm Beach County, to wit: defendants, SMALL, EFFINGER, CIKIN, JOHNSON, and CULPEPPER, under color of law and privately opposed denounced and criticized the aforesaid annexation (see e.g., Ex J, K, L, and M, annexed and incorporated herein by this reference), in a conspiracy to defeat same.

36. During 1973 the same (paragraph 35, supra.) officials of Palm Beach County illegally under color of law and privately (see e.g., Ex J, K, L, and M, annexed and incorporated herein by this reference) conspired to prevent or cause to be denied any zoning change for the aforesaid Lucom tracts by (a) public denounciation (b) threats of reprisal (c) institution of injunction suit (d) intimidation (e) promising under color of law, to overrule any zoning change by referring same on the county's motion to the South Florida Regional Planning Council as an area of Regional Impact under an improper and illegal interpretation of the legal standard for reference (which would require an expenditure of many thousands of dollars by plaintiff for studies and plans and delays of years) and (f) generally, by any means at their disposal to impede and frustrate any use of the Lucom tract for other than park or public institutional use as assigned it on the aforesaid Land Use Plan.

37. Particular overt acts of certain said defendants in furtherance of their conspiracy are as follows:

(a) As to defendants SMALL and EFFINGER each appeared, under color of law, at a meeting of the Town Council of the Town of Greenacres City, Florida, on June 25, 1973 and improperly opposed annexation of the Lucom tract, as did defendant CILKIN on November 20, 1973 improperly but successfully oppose rezoning.

(b) As to defendants JOHNSON and CULPEPPER each while a member of the Board of County Commissioners, public opposed said annexation of the Lucom tract as a violation of the Land Use Plan and threatened reprisals

against those involved, and were members of the South Florida Regional Planning Council.

38. The objectives of the conspiracy alleged in this Count are those of

(a) dedicating the Lucom tract effectively to only public use without compensation in violation of the federally protected equal protection clause of the Fourteenth Amendment as well as the eminent domain requirement thereunder

(b) frustrate any normal use or development of the Lucom tract which would enhance its value

(c) harass by excessive assessment and other misuse of law any use or retention in private hands of the Lucom tract, and

(d) depress its value by such illegal acts under color of law.

WHEREFORE, under this Second Count, plaintiff demands that this Court

(A) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants SMALL, EFFINGER, CIKLIN, JOHNSON, and CULPEPPER (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(B) This Court enjoin defendants herein from continuing the conspiracy and requiring correction of the Land Use Map.

THIRD COUNT

(Conspiracy of Second Count is joined by Conspiracy of First Count in Common illegal objectures, in violation of 42 USC 1985.)

39. Paragraphs 1-38 inclusive are incorporated herein by this reference.

40. The aforesaid conspiracy alleged in paragraph 6, supra, was in fact in furtherance and joining of the conspiracy alleged in paragraph 38, supra, which was then in progress.

WHEREFORE, under this Third Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID, STAHMAN, EFFINGER, SMALL, JOHNSON, CULPEPPER and CIKLIN (and other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,00.00) punitive damages

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra., and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

FOURTH COUNT

(Defendant REID, having power to prevent further damages to plaintiff by issuing a Certificate of Correction, refuses to do so, in violation of 42 USC 1986.)

41. Paragraphs 1, 2, 3a, 3d, 5-40 inclusive are incorporated herein by this reference.

42. Defendant REID being thus apprised of the circumstances constitution a deprivation of the equal protection

of the laws to the plaintiff as a consequence of the aforesaid conspiracy, and having the power to prevent or aid in the preventory the same, by issuing a certificate of correction or otherwise, defendant REID neglects and refuses to do so, as a consequence plaintiff has been damaged and will continue to be damaged in a manner which could have been prevented by the exercise of reasonable diligence by defendant REID, and said damage to plaintiff and her Lucom tract are in the amount of two million dollars ($2,000,000.00). Said refusal to act occurred within one year of filing this Complaint.

43. Under 42 USCA 1986, defendant REID is liable for the damages alleged in paragraph 42, supra.

WHEREFORE, plaintiff demands under this Fourth Count that this Court

(A) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendant REID (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(B) grant to plaintiff such other and further relief, legal and equitable as is meet under these premises.

FIFTH COUNT

(Assessments are void as in violation of Federal Constitution Guarantee of Equal Protection under law, and sole procedure thereunder must be enjoined.)

44. Paragraphs 1b, 1c, 2, 3a, 3b, 3c, 4-40 inclusive are incorporated herein by this referance.

WHEREFORE, under this Fifth Count, plaintiff demands that this Court

(A) enjoins the threatened tax sale described in paragraph 18, supra., pendente lite, and permanently,

(B) award plaintiff damages in the amount of two million dollars ($2,000,000.00) against defendants REID and STAHMAN (and any other defendants herein found to be co-conspirators with them under the facts alleged) with costs, plus an additional one million dollars ($1,000,000.00) punitive damages.

(C) declare void the 1974 assessment of the Lucom tract described in paragraph 5, supra, and

(D) issue its affirmative injunction to defendant Appraiser REID to issue his certificate of correction to bring the aforesaid 1974 Lucom tract assessment in parity with comparable parcels shown on Comparable Map (Ex A, attached) and

(E) grant to plaintiff such other and further relief, legal and equitable as it meet under these premises.

Respectfully submitted,

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APPENDIX B

(CAPTION OMITTED IN PRINTING)

(FILED JULY 7, 1975)

Plaintiff's Supplemental Points and Authorities in Opposition to Various Pending Motions by Defendants

A. Assessed Value Reduced By 70%.

Attached are copies of the Appraiser's Notice of Appraised Value received in June, 1975 by plaintiff covering the nine continuous parcels at issue in this suit.

The appraised value is tabulated as follows from figures appearing thereon:

1974	1975
$ 2,560,000	$ 768,000
658,000	197,400
1,200,000	360,000
1,360,000	408,000
752,600	225,780
90,000	30,000
540,000	162,000
940,000	282,000
2,882,800	864,840
$10,983,400	$ 3,298,020

B. Reduction By 70% In 1975 Proves 1974 Assessed Value Was Illegally High.

The Court can judicially note the publicized fact the appraised values in Palm Beach County has increased greatly from 1974 to 1975. The status of the Lucom tract has not changed and the fact that the Appraiser has seen fit to lower the appraised value by $7,685,380 is a bland admission that the 1974 appraisal was excessive by at least that amount.

However, as established by the Comparables Map, attached to the Complaint as Exhibit A, the 1974 appraisal was actually excessive by not 70% thereof but rather about 95% thereof. Thus the 1974 appraisal of $10,983,400 should have been $549,170 approximately.

Plaintiff verily believes the 1975 appraisal is still excessive under controlling law.

C. Legend On Appraiser's Notification Cards Admits There Is No Constitutionally Required Remedy In Florida From Appraisal Which Are Unequally High.

Referring to the issue discussed in part 2, from page 4 through 16 of plaintiff's memorandum filed May 27, 1975 and again part 2 through page 5 through 8 of her memorandum filed June 3, 1975 namely that 28 U.S.C. 1341 is no bar to ancillary injunctive relief in this case because the State of Florida presently provides no relief from *unequally* high assessments as distinguished from unjustly high as compared to fair market value. The *Sioux City Bridge* principle (260 U.S. 441) requires both protections and holds that if there is a conflict between them, the equality requirement should prevail.

What could be clearer than that the legend on the aforesaid card? The present Florida situation is precisely that which was denounced in the *Sioux City* case, supra, and *Hillsboro* case (326 U.S. 620).

With this admission, 28 U.S.C. 1341 is totally inapplicable and on the facts established by Ex. A, the Comparable Map the Lucom 1974 assessment is clearly violative of the federal constitution.

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(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

APPENDIX C

(CAPTION OMITTED IN PRINTING)

(FILED JULY 24, 1975)

Order

BACKGROUND

The plaintiff, a citizen of Maryland, owns approximately 545 acres of land situated in Palm Beach County, Florida. In 1973, the property was assessed at approximately $490,000.00, resulting in a property tax of some $13,000.00. In 1974, the property was reassessed at $10,993,400.00, resulting in a tax of $263,353.73. The increase in assessed taxes from 1973 to 1974 is thus some $250,000.00.

The plaintiff has brought this action under the civil rights statutes, alleging in five counts as follows: Count One, a conspiracy to defraud plaintiff by a grossly discriminatory assessment in violation of 42 U.S.C. § 1985; Count Two, a conspiracy to effect a partial taking of plaintiff's property without compensation by arbitrarily classifying it as a park, in violation of 42 U.S.C. § 1985; Count Three, that the conspiracy of the second count is joined by the conspiracy of the first count in common illegal objectives in violation of 42 U.S.C. § 1985; Count Four, that defendant Reid, property appraiser of Palm Beach County, refuses to prevent further damages to plaintiff by issuing a Certificate of Correction in violation of 42 U.S.C. § 1986; and Count Five, that the assessments are void as in violation of the federal constitutional guarantee of equal protection under the law. As relief, the plaintiff seeks to enjoin the tax sale of the property, the award of damages, declaratory relief and further injunctive relief.

THE APPLICABILITY OF 28 U.S.C. § 1341, THE TAX INJUNCTION ACT

The defendants argue vigorously that the Tax Injunction Act of 1937, 28 U.S.C. § 1341, bars the prosecution of this lawsuit in federal court. The plaintiff contends, equally strenuously, that this action is not primarily a suit for tax injunction, but is rather a civil rights action seeking damages for an alleged conspiracy in violation of plaintiff's federal constitutional rights.

The Tax Injunction Act, 28 U.S.C. § 1341, provides as follows:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The inquiry as to the applicability of the above statute is two-pronged: the first question is whether the suit is one to "enjoin, suspend or restrain the assessment, levy or collection" or a state tax; and the second question, if the first is answered in the affirmative, is whether there is a "plain, speedy and efficient remedy" in the state courts. Title 28 U.S.C. § 1341 is a jurisdictional bar to the maintenance in federal courts of actions which come within its meaning; thus, if applicable, it will bar the prosecution of the instant suit and the defendants' motions to dismiss must be granted. *Hargrave* v. *McKinney*, 413 F.2d 320 (5th Cir. 1969).

In ascertaining whether this suit is one to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax, it is appropriate to examine the complaint to determine the essential nature of the claim. *Beard* v. *Stephens*, 377 F.2d 685 (5th Cir. 1967). It is clear that the mere allegation that the primary nature of a claim is a civil rights suit rather than a tax injunction suit will not prevent 28

U.S.C. § 1341 from divesting the Court of jurisdiction. *Hickmann* v. *Wujick,* 488 F.2d 875 (2d Cir. 1973); *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972); *Bussie* v. *Long,* 383 F.2d 766 (5th Cir. 1967); *Kimmey* v. *H. A. Berkheimer,* 376 F.Supp. 49 (E.D. Pa. 1974); *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Ver. 1973).

The *Bland* v. *McHann* case, *supra,* involved a suit brought under the civil rights statutes by Negroes who claimed that the assessed valuation of their properties had been discriminatorily increased in retaliation for peaceful protests against alleged racial discrimination. In holding that 28 U.S.C. § 1341 barred prosecution of the action in federal court, the Fifth Circuit stated:

> It is well established that § 1341 is an explicit congressional limitation on the jurisdiction of the federal courts in cases which would enjoin, suspend or restrain state tax levy, assessment or collection. Taxpayers seek to circumvent § 1341 by arguing that relief under § 1983 is supplemental and is not limited to any require of exhaustion of state remedies. We do not disagree with the general rule that exhaustion is not required in § 1983 cases; however, in this case § 1983 collides full force with a specific congressional limitation on federal jurisdiction. In such circumstances we are convinced that § 1341 must prevail.

Bland v. *McHann, supra,* p. 24. The Court went on to note that, where the state offers a plain, adequate and complete remedy, it is the duty of the federal court to remit the taxpayers to state court. *Id,* p. 26.

In the case of *Kimmey* v. *Berkheimer,* 376 F.Supp 49 (E.D. Pa. 1974), plaintiffs brought suit under the civil rights statutes, challenging the constitutionality of certain sections of the state tax law which authorized local tax collectors to distrain personal property of delinquent tax-

payers prior to a hearing or an adjudication relative to liability for the taxes. The Court, citing with approval the *Bland* v. *McHann* case, *supra,* held that the statutory prohibition of § 1341 cannot be avoided merely by framing the complaint as a request for declaratory relief, and further stated that "where jurisdiction is circumscribed by § 1341, premising the Court's power on 42 U.S.C. § 1983 and its jurisdictional analogue, 28 U.S.C. § 1343, will not compel a contrary result." *Kimmey* v. *Berkheimer, supra,* p.53.

The *Bland* v. *McHann* and *Kimmey* v. *Berkheimer* cases are closely analogous to the instant action. In both cases, as in this one, plaintiffs brought their actions under the civil rights statutes. In both cases, the Courts held that where the civil rights statutes collide with § 1341, § 1341 must prevail. Although the plaintiff in the instant cause contends that the thrust of her complaint is a civil rights action, it is readily apparent upon examination of the complaint that the entire controversy centers around an allegedly void tax assessment, with both injunctive and declaratory relief sought. Calling the complaint a civil rights action cannot conceal the fact that this entire action is inextricably intangled with Florida's tax law. Where that is true, federal courts are statutorily mandated by § 1341 to follow a policy of positive nonintervention with the state taxation processes. The plaintiff here seeks both injunctive relief against the county tax authorities, in addition to declaratory relief; this case is essentially one to "enjoin, suspend or restrain the assessment, levy, or collection of a state tax. Clearly, the reasoning of the *Bland* v. *McHann* and *Kimmey* v. *Berkheimer* cases is applicable to this lawsuit, and the first requirement of the two-pronged § 1341 test has been met.

It should be noted that, while the plaintiff seeks to avoid the § 1341 jurisdictional bar by contending that § 1341 cannot be a bar to an action seeking money damages, plaintiff's position is untenable. In the case of *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Ver.

1973), the Court in a well-reasoned opinion disposed of the identical issue by stating:

> Finally, the plaintiffs seek additional damages totaling $150,000.00. It is elementary that constitutional rights must be found to have been abridged in order for damages to be recovered in a civil rights action. Thus the plaintiffs in this action cannot recover damages without a determination by this court that the taxation of their Newbury property was effected in violation of their constitutional rights. If we were to make such a determination, we would, in effect, be issuing a declaratory judgment regarding the constitutionality of the tax levied on the plaintiffs. As the court is prohibited from issuing such a declaratory judgment, as indicated earlier, the court is also precluded as a matter of law from adjudicating the plaintiffs' damages claims.

Evangelical Catholic Communion, Inc. v. *Thomas, supra,* p. 1344. This reasoning is dispositive of the question of whether a prayer for damages will avoid the § 1341 jurisdictional bar otherwise applicable to a lawsuit.

Having answered the first inquiry in the affirmative, the final § 1341 question becomes whether there is a plain, speedy and efficient remedy in the state courts. This inquiry must likewise be answered affirmatively.

Chapter 194 of the Florida Statutes provides for "Administrative and Judicial Review of Property Taxes." Section 194.011 provides that notice of an assessment increase shall be given to each person subjected to the tax, and provides that anyone objecting to the assessment may file a petition opposing the assessment. Section 194.015 provides for a board of tax adjustment, and section 194.032 provides for the procedure to be followed by the board in hearing complaints. Section 194.042 provides for further administrative challenge to the assessment. Section 194.171 gives to the state Circuit Courts original jurisdiction of all matters at law pertaining to property taxation. Section

194.211 provides that an injunction may issue to restrain the sale of real property for any tax which appears to be contrary to law or equity. Clearly, Florida law provides for a plain, speedy and efficient remedy which can be had in state courts. Indeed, the Fifth Circuit has previously held that Florida provides a "plain, speedy and efficient remedy" within the meaning of § 1341. *Carson* v. *City of Ft. Lauderdale,* 293 F.2d 337 (5th Cir. 1961).

Plaintiff's contention that the sixty day period for filing suit, provided by Fla. Stat. 194.171(2), has expired, leaving her without an adequate state remedy, is without merit. The Fifth Circuit has previously rejected this contention, stating:

> The expiration of time in which the state suit might have been brought does not result in the destruction of the plain and simple remedy principle specified in the Johnson Act. To hold otherwise would allow any disgruntled taxpayer to simply wait until the statute of limitations had run in the state courts and then bring suit in the federal court.

Henry vs. *Metropolitan Dade County,* 329 F.2d 780 (5th Cir. 1964).

CONCLUSION

From the foregoing discussion, it is clear that this is a suit to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax and that a "plain, speedy and efficient remedy" may be had in the state courts. Pursuant to 28 U.S.C. § 1341, this Court is therefore divested of jurisdiction. It is thereupon

ORDERED and ADJUDGED that the defendants' motions to dismiss are granted.

DONE and ORDERED at West Palm Beach, Florida this 23d day of July, 1975.

/s/ CHARLES R. FURTON,
Chief Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-3484

VIRGINIA W. LUCOM, *Plaintiff-Appellant,*

versus

DAVID L. REID, ETC., ET AL., *Defendants-Appellees.*

Appeal from the United States District Court for the Southern District of Florida

(April 15, 1977)

Before JONES, COLEMAN and TJOFLAT,
Circuit Judges.

PER CURIAM:

The appellant, in her district court action sought relief from an asserted overvaluation of real estate for ad valorem taxes by a complaint framed as a civil rights action under 42 U.S.C.A. §§ 1985, 1986 and the Equal Protection clause of the United States Constitution. The Congress has said that "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C.A. § 1341. It cannot be said that such State remedy does not exist. The judgment of the district court is AFFIRMED.